

CLERK OF THE COURT

1 **OPP**  
2 **LIONEL SAWYER & COLLINS**  
3 Charles H. McCrea, Jr. (SBN #104)  
4 Meredith L. Markwell (SBN #9203)  
5 1700 Bank of America Plaza  
6 300 South Fourth Street  
7 Las Vegas, Nevada 89101

8 Tel (702) 383-8888  
9 Fax (702) 383-8845

10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **CONSIPIO HOLDING BV, a corporation**  
14 **organized under the laws of The Netherlands,**  
15 **et al.,**

16 **Plaintiffs,**

17 **vs.**

18 **PRIVATE MEDIA GROUP, INC., a Nevada**  
19 **corporation, et al.,**

20 **Defendants,**

21 **AND ALL RELATED ACTIONS.**

Case No.: A-10-622802-B  
Dept. No.: XI

22 **ERRATA TO PLAINTIFFS'**  
23 **OPPOSITION TO DEFENDANT**  
24 **PRIVATE MEDIA GROUP, INC.'S**  
25 **MOTION FOR STAY OF ORDER**  
26 **APPOINTING RECEIVER**

27 **Date of Hearing: August 31, 2011**  
28 **Time of Hearing: 9:00 a.m.**

29 Plaintiffs CONSIPIO HOLDING BV ("Consipio"), ILAN BUNIMOVITZ  
30 ("Bunimovitz"), TISBURY SERVICES INC. ("Tisbury"), and CLAUDIO GIANASCIO  
31 ("Gianascio; collectively "Plaintiffs") oppose the motion filed by Defendant PRIVATE MEDIA  
32 GROUP, INC. ("PRVT") for a stay of the Order appointing Eric Johnson as Receiver for PRVT  
33 pending PRVT's second petition for writ relief to the Nevada Supreme Court: Unless Mr.  
34 Johnson is permitted to act as the Recciver for PRVT, Milton will succeed in fraudulently

1 draining away all of PRVT's assets and valuable intellectual property rights -- as he has already  
2 tried to do in the days following the Court's August 23, 2011 ruling -- thereby bankrupting the  
3 corporation.

4 **I. STATEMENT OF FACTS**

5 On August 23, 2011, after a year of allowing PRVT the more lenient option of a  
6 preliminary injunction to prevent further embezzlement and mismanagement by defendant Berth  
7 H. Milton Jr. ("Milton"), PRVT's President, Chairman and CEO, and after a year of PRVT and  
8 its so-called "independent" directors failing to take any actions to try to recover the millions  
9 embezzled by Milton, the Court appointed director Eric Johnson as Receiver for PRVT.

10 The recent developments that have occurred in the few days since the Court's August 23,  
11 2011 decision further demonstrate the need for a receiver:

- 12 • On August 25, 2011, two days after the Court appointed Mr. Johnson as receiver,  
13 *Milton removed €17,035.60 (approximately \$24,701.62) from PRVT's bank*  
14 *accounts.*<sup>1</sup>
- 15 • On August 26, 2011, PRVT filed an 8-K with the SEC (without informing Mr.  
16 Johnson or obtaining his input as to the 8-K), in which PRVT states that  
17 "[w]hether or not the Order [appointing Receiver] is stayed or set aside, the  
18 Company intends to continue to conduct its business in the ordinary course" --  
19 *i.e., PRVT will not recognize the authority of the Receiver.*<sup>2</sup>
- 20 • On August 28, 2011, Johan Gillborg sent an email to Mr. Johnson informing him  
21 that PRVT has "received preliminary legal advice from local counsel in Sweden  
22 and Spain and additional legal steps must be taken by you, as receiver, to exercise  
23 power over non-US operations. We are awaiting legal advice in other  
24 jurisdictions."<sup>3</sup>
- 25 • On August 29, 2011, when Mr. Johnson arrived in Barcelona, Spain and went to

26 <sup>1</sup> See Exhibit 1, excerpts from the daily cash balances (filed under seal).

27 <sup>2</sup> See Exhibit 2, PRVT's Form 8-K filed on August 26, 2011.

28 <sup>3</sup> See Exhibit 3, the email chain between Mr. Johnson and Mr. Gillborg.

1 PRVT's European headquarters with certified copies of the Order appointing him  
2 as Receiver, *Mr. Johnson was refused entry into the building on Milton's*  
3 *orders.*<sup>4</sup>

- 4 • On August 29, 2011, Andrew Sullivan, the Vice President of Online Services for  
5 PRVT, accompanied Mr. Johnson at his request to European headquarters. *Mr.*  
6 *Sullivan was initially allowed into PRVT's offices but was forced to leave by*  
7 *Milton, who called the police and building security to have Mr. Sullivan*  
8 *forcibly removed.*<sup>5</sup> Mr. Sullivan left the building before the police arrived after  
9 being given an unsigned letter from Milton stating that "Milcap Media Group,  
10 S.L.U. [one of PRVT's main subsidiaries] - or any other Spanish company  
11 mentioned in the decision - *has no legal duty to follow the receiver's*  
12 *instructions.*"<sup>6</sup>
- 13 • On August 29, 2011, nearly a week after the Court's ruling appointing the  
14 Receiver, *Milton attempted to transfer the valuable internet domain name*  
15 *"private.com" from the company's name into his own name.* Upon learning of  
16 this, Mr. Johnson contacted the legal department of the registrar and informed  
17 them of the Order appointing him as Receiver of PRVT. The registrar refused to  
18 acknowledge Milton's attempted transfer and placed the internet domain name  
19 "private.com" under a legal block to prevent Milton from continuing to try to  
20 transfer it into his own name.<sup>7</sup>
- 21 • PRVT's CFO, Johan Gillborg ("Gillborg"), and U.S. Securities counsel, Samuel  
22 Guzik ("Guzik"), have been organizing calls with the NASDAQ without Mr.  
23 Johnson's knowledge or input.<sup>8</sup>

24  
25 <sup>4</sup> See Exhibit 4, the Declaration of Eric Johnson.

26 <sup>5</sup> See Exhibit 5, the Declaration of Andrew Sullivan.

27 <sup>6</sup> See Exhibit 6, the Declaration of Joseph Soltis.

28 <sup>7</sup> See Exhibit 7, the email communications discussing the domain name.

<sup>8</sup> See Exhibit 8, the email communications between Johan Gillborg and the NASDAQ.

1       **II.     LEGAL DISCUSSION**

2               NRAP 8(a) "require[s] a party to seek a stay in the district court before seeking a stay in"  
3       the Nevada Supreme Court. Hansen v. Eighth Judicial District Court, 116 Nev. 650, 657, 6 P.3d  
4       982, 986 (2000). The Supreme Court noted that this "requirement is a sound one that should also  
5       apply to writ petitions when the order the petition seeks to challenge is one issued by a district  
6       court." *Id.*

7               In Hansen, the Supreme Court explained:

8                       In deciding whether to issue a stay, this court generally considers the  
9                       following factors:

10                               (1) Whether the object of the appeal or writ petition will be  
11                               defeated if the stay is denied;

12                               (2) Whether appellant/petitioner will suffer irreparable or  
13                               serious injury if the stay is denied;

14                               (3) Whether respondent/real party in interest will suffer  
15                               irreparable or serious injury if the stay is granted; and

16                               (4) Whether appellant/petitioner is likely to prevail on the  
17                               merits in the appeal or writ petition.

18       *Id.* (citing NRAP 8(c); Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948)).

19               Here, none of the factors listed in Hansen support PRVT's request for a stay of the Order  
20       appointing Mr. Johnson as Receiver pending the Supreme Court's decision on PRVT's second  
21       petition for writ relief.

22               PRVT claims that it will suffer irreparable harm if the Order appointing Mr. Johnson as  
23       Receiver is not stayed. Nothing could be further from the truth. Unless Mr. Johnson is able to  
24       act as Receiver for PRVT, Milton will drain away all of PRVT's assets and valuable intellectual  
25       property rights, thereby destroying the corporation before the writ petition can be decided.

26               In his Declaration, Mr. Sullivan states that in January of 2011, during a meeting between  
27       Milton and Mr. Sullivan, *Milton stated that "if they [the plaintiffs in the Nevada case against  
28       PRVT] win, there will be nothing left of the company to take."* This suggested to Mr. Sullivan  
29       that Milton was preparing to either drain, damage or remove assets from Private-owned

1 companies.<sup>9</sup>

2 This concern has been verified by Milton's actions since the Court appointed the  
3 Receiver. As discussed above, on August 25, 2011, two days after the Court appointed Mr.  
4 Johnson as receiver, *Milton removed €17,035.60 (approximately \$24,701.62) from PRVT's*  
5 *bank accounts.*<sup>10</sup> On August 29, 2011, nearly a week after the Court's ruling appointing the  
6 Receiver, *Milton attempted to transfer the valuable internet domain name "private.com" from*  
7 *the company's name into his own name.* Upon learning of this, Mr. Johnson contacted the legal  
8 department of the registrar and informed them of the Order appointing him as Receiver of PRVT.  
9 The registrar refused to acknowledge Milton's attempted transfer and placed the internet domain  
10 name "private.com" under a legal block to prevent Milton from continuing to try to transfer it  
11 into his own name.<sup>11</sup> Thus, PRVT's claim that the object of its writ petition will be defeated if a  
12 stay of the Order appointing the Receiver is not granted fails in its entirety.

13 PRVT argues that these proceedings, particularly the Order appointing Mr. Johnson as  
14 Receiver, should be stayed pending the resolution of PRVT's most recent writ petition to the  
15 Nevada Supreme Court. However, a stay of the Order appointing the Receiver is not  
16 appropriate, given that PRVT is not likely to prevail on its petition for writ relief from that  
17 Order.

18 The Nevada Supreme Court has explained that "when moving for a stay pending an  
19 appeal or writ proceedings...the movant must present a substantial case on the merits when a  
20 serious legal question is involved and show that the balance of equities weighs heavily in favor  
21 of granting the stay." Hansen v. Eighth Judicial District Court, 116 Nev. 650, 659, 6 P.3d 982,  
22 987 (2000)(quoting Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir.1981)).

23 Here, PRVT is not likely to prevail on its petition for writ relief from the Order  
24 appointing the Receiver, since NRS 78.650 clearly allows the Court to appoint a receiver for a  
25 Nevada corporation where, as here, "[i]ts trustees or directors have been guilty of fraud or

26 <sup>9</sup> See Exhibit 5.

27 <sup>10</sup> See Exhibit 1 (filed under seal).

28 <sup>11</sup> See Exhibit 7.

1 collusion or gross mismanagement in the conduct or control of its affairs," "[i]ts trustees or  
2 directors have been guilty of misfeasance, malfeasance or nonfeasance," and "[t]he assets of the  
3 corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or  
4 otherwise."

5 Finally, it is not appropriate to stay the Order appointing the Receiver indefinitely  
6 pending the resolution of PRVT's second writ petition, which will certainly take many months --  
7 particularly since Milton continues to try to fraudulently transfer PRVT's corporate assets and  
8 valuable intellectual property rights away from the corporation and into his own name.

9 **III. CONCLUSION**

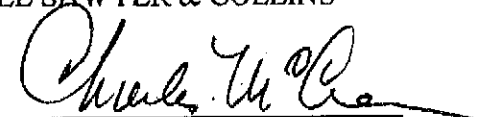
10 PRVT will not suffer irreparable harm if the Order appointing Mr. Johnson as receiver is  
11 not stayed. Unless Mr. Johnson is permitted to act as Receiver, Milton will succeed in  
12 fraudulently draining away all of PRVT's assets and valuable intellectual property rights, thereby  
13 bankrupting and destroying the corporation before the writ petition can be decided. Moreover,  
14 PRVT is not likely to prevail on its petition for writ relief from the Order Appointing Receiver.

15 PRVT's motion for a stay of the Order appointing Mr. Johnson as Receiver pending the  
16 resolution of its second writ petition should therefore be dismissed.

17 Respectfully submitted,

18 LIONEL SAWYER & COLLINS

19  
20 By:



21 Charles H. McCrea, Jr. (NSB #104)  
22 Meredith L. Markwell (NSB #9203)

23 *Attorneys for Plaintiffs*  
24  
25  
26  
27

1 CERTIFICATE OF SERVICE

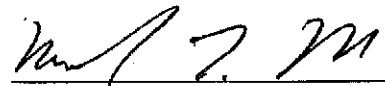
2 I hereby certify that on this 7 day of August, 2011, I served a copy of the foregoing  
3 ERRATA TO PLAINTIFFS' OPPOSITION TO DEFENDANT PRIVATE MEDIA GROUP,  
4 INC.'S MOTION FOR STAY OF ORDER APPOINTING RECEIVER by mailing a copy in the  
5 United States Mail, postage prepaid at Las Vegas, Nevada, addressed to the following at their  
6 last known address:  
7

8 Robert A. Dotson, Esq.  
9 Laxalt & Nomura, Ltd.  
10 9600 Gateway Drive  
11 Reno, NV 89521  
12 *Attorneys for Defendants Private Media Group, Inc.,  
Bo Rodebrant, Johan Gillborg, Peter Dixinger and Johan  
Carlberg*

13 John S. Delikanakis, Esq.  
14 Karl O. Riley, Esq.  
15 Snell & Wilmer LLP  
16 3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
*Attorneys for Defendant Berth H. Milton, Jr.*

17 A courtesy copy was also sent via email to Mr. Dotson and Mr. Delikanakis.  
18

19 By:

  
20 Meredith L. Markwell, an employee of  
21 Lionel Sawyer & Collins  
22  
23  
24  
25  
26  
27  
28